COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 10 of 2005

M/s R & B Falcon Drilling Co.,
As agent of Mr. Fritz verlinden

..... Appellant

Versus

The Commissioner of Income Tax, Dehradun

.....Respondent

Ms. Krishi Shukla, Advocate for the appellant.
Mr. Pitamber Maulekhi, Advocate for the respondent.

Date: May 6, 2006

Coram: Hon.P.C. Verma, J.
Hon. B.C. Kandpal, J.

Both the parties are ready to argue the matter today.

2. This appeal has been preferred against the order dated 21.09.2004 for the assessment year 1999-2000, passed by the Income Tax Appellate Tribunal, (Bench 'A' New Delhi).

3. Briefly stated facts are that the appellant during the year consideration employed foreign technicians for execution of contracts in India relating to drilling operation at a rig in India. As per terms of the services, 28 days was working days and 28 days was off days. After working for 28 days on the Board, the appellant had gone outside India and could not stay in India for 28 days. The Assessing Officer taxed the off-period salary. In the first appeal, the Commissioner of Income Tax (Appeals), Dehradun after

relying on its earlier order dismissed the appeal. In the second appeal preferred by the assessee, the Income tax Appellate Tribunal, Delhi partly allowed the appeal.

4. The question of law framed in the memo of appeal for our determination is as follows:-

> **Whether the Tribunal was right in holding that off- period salary was not taxable under Section 9(1)(ii) read with the Explanation as it stood at the relevant time?**

5. An identical question was answered by the Division Bench of this Court in the favour of the Revenue in the case of *Commissioner of Income Tax and another Vs. Sedco Forex International Drilling Co. Ltd. reported in (2003) 264 ITR 320.* The Special Leave Petition was filed against the judgment by the Sedco Forex International Drilling Co. Ltd., which was converted into Civil Appeal Nos.351-355 of 2005. The Hon'ble Apex Court in **"Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another, JT 2005(9) SC 639"** has held that since the Explanation to Section 9(1)(ii) of the Income Tax Act, 1961 was amended by the Finance Act 1999 and was prospective, therefore, it could not be made applicable in the previous years i.e. to say that no retrospective effect can be given to the Explanation, if the assessment proceedings are pending after the said amendment and accordingly the judgment of Division Bench of this Court was set aside as the assessment year in dispute was prior to 1999.

6. In the present case also, the assessment year is prior to 1999, thus the assessee cannot be taxed in view of the law laid down by the Hon'ble Apex Court **"Sedco Forex**

International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another (Supra).

7. Accordingly, the appeal is allowed. The question is answered accordingly. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang